

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 297X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
LAFAYETTE COUNTY, MO.

Decided: February 23, 2012

This decision reopens this proceeding and issues a notice of interim trail use.

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 2.91 miles of a line of railroad known as the Lexington Industrial Lead between milepost 246.49 near Myrick and milepost 243.58 near Lexington, in Lafayette County, Mo. (the line). Notice of the exemption was served and published in the Federal Register on February 18, 2011 (76 Fed. Reg. 9,634-35) (February 2011 notice). The exemption became effective on April 1, 2011.¹

In an environmental assessment served on February 25, 2011, the Board's Office of Environmental Analysis stated that the right-of-way (ROW) might be suitable for other public use following abandonment and salvage of the line. On November 29, 2010, the City of Lexington (City) late filed a letter dated November 22, 2010, requesting the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. However, because UP had not indicated its willingness to negotiate with the City for interim trail use and the City's statement of willingness did not conform to the requirements of the Trails Act and the Board's regulations at 49 C.F.R. § 1152.29, the City's request for issuance of a NITU was denied by decision served on March 29, 2011.

On February 16, 2012, the City late filed a new letter, which it amended that day, again requesting the issuance of a NITU for the line and indicating that the City "is now in a position to state its willingness to assume financial responsibility" under the Board's regulations.² The

¹ See Union Pac. R.R.—Aban. Exemption—in Lafayette Cnty., Mo., AB 33 (Sub-No. 297X) (STB served Mar. 29, 2011 and July 22, 2011).

² The February 2011 notice provided that requests for trail use/rail banking were to be filed by February 28, 2011. However, in Abandonment & Discontinuance Of Rail Lines & Rail Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, it will be
(continued . . .)

City has submitted a statement of willingness to assume full responsibility for the management of the ROW, for any legal liability arising out of the transfer or use of the ROW, and for the payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to the user's ability to meet the responsibilities described above and to future reconstruction and reactivation of the ROW for rail service. In a response filed on February 17, 2012, UP states that it is willing to negotiate interim trail use with the City and supports the City's request for a 180-day negotiation period.

Because UP agrees to the City's request for a NITU and the City's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to any outstanding conditions imposed in this proceeding. See 49 C.F.R. § 1152.29(d)(1). Use of the ROW for trail purposes is subject to any future use of the property for restoration of railroad operations.

This decision and notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The City's late-filed request for a NITU under 16 U.S.C. § 1247(d) is granted.
3. Upon reconsideration, the February 2011 notice exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below and permit the City to negotiate with UP for interim trail use/rail banking of the ROW for a period of 180 days commencing from the service date of this decision and notice (until August 22, 2012).
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.

(... continued)

accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke Cnty., Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

5. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the ROW.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by August 22, 2012, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the other conditions imposed in this proceeding are met. See 49 C.F.R. § 1152.29(d)(1).

8. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.